

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#32

-----  
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
-----

Ex parte CHRISTIAN MAYAUD

-----  
Appeal No. 2003-0317  
Application No. 09/121,596

SOLICITOR  
AUG 18 2004  
U.S. PATENT & TRADEMARK OFFICE

Commissioner of Patents and Trademarks  
Box 8  
Alexandria, VA 22313-1450  
Attention: Office of the Solicitor

**NOTICE OF APPEAL**  
to  
**COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Sir:


Appellant. Cybear, LLC, owner of all rights in the above captioned patent application of Christian Mayaud by assignment, hereby appeals to the Court of Appeals for the Federal Circuit from the Decision on Appeal mailed June 17, 2004, of the Board of Patent Appeals and Interferences, rejecting claims 70, 72 through 92 and 94 through 102.

A copy of this Notice of Appeal is being forwarded to the United States of Court of Appeals for the Federal Circuit, with a check for the docketing fee of \$250.00.

The Commissioner is hereby authorized to charge any fees which may be required in the filing of this Appeal to Deposit Account No. 182262.

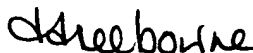
Respectfully submitted,

Date: August 17, 2004

By:   
Robert M. Schwartz, Reg. No. 29,854  
RUDEN, McCLOSKEY, SMITH,  
SCHUSTER & RUSSELL, P.A.  
200 East Broward Boulevard  
Fort Lauderdale, Florida 33301  
Tel.: (954) 527-6252  
Fax: (954) 333-4252  
Attorney for Applicant/Appellant

**EXPRESS MAIL "mailing label No. EV 008641481 US - Deposited: August 17, 2004**  
**Certificate of Mailing under 37 CFR 1.10**

I hereby certify that this Paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee: service under 37 CFR 1.10 on the date indicated above and addressed to: Commissioner for Patents and Trademarks, Box 8, Alexandria, VA 22313-1450, Attention: Office of the Solicitor on August 17, 2004.



/Vernice V. Freebourne

August 17, 2004

**CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the foregoing has been furnished by via U.S. regular mail to: U.S. Courts of Appeals for the Federal Circuit, 717, Madison Place, N.W., Washington, DC 20439 on August 17, 2004.

Respectfully submitted,

Date: August 17, 2004

Attachment:

Check No. 85516 - \$250.00

By:   
Robert M. Schwartz, Reg. No. 29,854  
Attorney for Applicant/Appellant

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte CHRISTIAN MAYAUD

---

Appeal No. 2003-0317  
Application No. 09/121,596

---

ON BRIEF

---

Before THOMAS, HAIRSTON, and KRASS, Administrative Patent Judges.  
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 70, 72 through 92 and 94 through 102.

The disclosed invention relates to a method of using a computerized prescription system.

Claim 70 is illustrative of the claimed invention, and it reads as follows:

70. A method of using a computerized prescription system,

Appeal No. 2003-0317  
Application No. 09/121,596

having

at least one user computer and a graphical user interface, the method comprising the steps of;

a. permitting capture of prescription information and

b. selectively providing access to all of (1) information about a patient's prescription history, (2) information about pharmaceuticals arranged by medical conditions for which the pharmaceuticals are suitable for treating, and (3) information about the properties of pharmaceuticals using said user interface, and

c. selectively communicating with one or more other computers run respectively by or on behalf of one or more of a group consisting of (a) a Health Maintenance Organization, (b) an insurance company, (c) a drug benefit plan, (d) a pharmacy run by a different organization than the organization running the user computer, (e) a laboratory and (f) a physician practice.

The references relied on by the examiner are:

Schrier et al. (Schrier)	5,833,599	Nov. 10, 1998
	(effective filing date Dec. 13, 1993)	

Ballantyne et al. (Ballantyne)	5,867,821	Feb. 2, 1999
	(filed Feb. 16, 1996)	

Claims 70, 72 through 83, 91, 92, 94 through 99, 101 and 102 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Schrier.

Claims 84 through 90 and 100 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schrier in view of Ballantyne.

Reference is made to the briefs (paper numbers 24 and 26), the final rejection (paper number 21) and the answer (paper number 25) for the respective positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will sustain the anticipation rejection of claims 70, 72 through 83, 91, 92, 94 through 99, 101 and 102, and the obviousness rejection of claims 84 through 90 and 100.

Turning first to the anticipation rejection of claims 70, 83 and 94, we find that Schrier teaches every method step of the claimed computerized prescription system, and all of the claimed elements of the computer program product. A computer and graphical user interface 112 (Figure 1) is used by a user in Schrier to capture prescription information in a computerized prescription system. We agree with the examiner (final rejection, page 2) that the computer selectively provides "(1) information about a patient's medical history and prescription history (col. 6 lines 5-11); (2) information about pharmaceuticals arranged by medical conditions (FIG. 3); and (3) information about the properties of pharmaceuticals (Figs. 6, 7 and 10-22)," and that "[t]he computer (112) is connected to a network of computers as part of a hospital or other type of clinical setting (col. 5 lines 18-24)." The Abstract and summary of the invention (column 2, lines 11 through 63) clearly state that the system keeps tabs of the patient's medical history, and the index drug selected for the treatment of

the patient's condition. The properties of the index drug and other drugs are disclosed by Schrier (Figures 4 through 7). Besides the index drug, Schrier lists other drugs that can be used to treat the patient, along with their respective prices (Figure 9). The system in Schrier selectively communicates with one or more other computers at an outside pharmacy run by a different organization than the organization running the user computer (column 5, lines 18 through 23; column 13, lines 45 through 48; column 14, lines 65 through 67; column 29, lines 53 through 55; column 38, lines 1 through 3).

The above-noted one or more computers can also be located at a hospital in Schrier (column 6, lines 27 through 32; column 13, lines 17 through 23) (claim 72).

The information gathered from the one or more computers is presented to the graphical user interface in Schrier (column 4, lines 24 through 45) (claims 73 and 75).

All of the information gathered about the patient is used to form a patient history in Schrier (Abstract; column 2, lines 50 through 55; column 6, lines 4 through 11) (claim 74).

The drug interactions window (Figure 4), the dosage recommendation window (Figure 5), the pharmacology information

Appeal No. 2003-0317  
Application No. 09/121,596

window (Figure 6) and the side effects window (Figure 7) are all displays of properties of pharmaceuticals in Schrier (claim 76).

As indicated supra, the Schrier system can selectively communicate via the graphical user interface to electronically send a prescription directly to a pharmacy to be filled (claim 77).

Schrier clearly teaches the condition treated, the body system treated by the pharmaceuticals and the pharmaceuticals prescribed for the particular patient (Figure 2) (claims 78 and 79).

Schrier selectively arranges information about pharmaceuticals by drug category (Figure 9) (claim 80).

The suggestion of alternative pharmaceuticals and dosages for treatment of a condition is taught by Schrier (Figure 9) (claims 81, 82 and 98).

Schrier keeps chronological records of patient information (column 13, lines 50 through 52) (claim 91).

If Schrier, or any other system, does not desire to keep a record, then do not save it (claim 92). Appellant did not invent common sense. More importantly, the artisan is presumed to possess skill in the art. In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985).

As indicated supra, the Schrier system is connected to other systems to place drug orders, and to exchange information about a

patient's medical history, drugs that are available to treat the patient and costs for the drugs (column 5, lines 18 through 23; column 6, lines 27 through 32). The E-mail address of the doctor that ordered the drugs will be on the electronically sent prescription for drugs (column 14, line 65 through column 15, line 9; column 21, line 41 and 42). The other systems are presumed to possess record storage features (claims 95 through 97).

Schrier discloses a computer program product residing on a computer for accomplishing all of the above-noted tasks relating to a patient's drug use (column 37, line 9 through column 38, line 65). (claims 99, 101 and 102).

Turning next to the obviousness rejection of claims 84 through 90 and 100, we agree with the examiner (final rejection, page 4) that "[i]t would have been obvious to one of ordinary skill in the art to substitute a personal digital assistant for the user computer (112) in Schrier et al. so as to allow the user the advantage of mobility, as taught by Ballantyne et al." Appellant's arguments (reply brief, pages 10 through 14) to the contrary notwithstanding, the personal data assistant (PDA) in Ballantyne uses digital technology, and is mobile like the PDA disclosed and claimed by appellant (Abstract; column 3, lines 60 through 67;



Appeal No. 2003-0317  
Application No. 09/121,596

column 10, line 40 and 41; column 11, lines 24 and 25; column 12, lines 12 through 66; column 13, lines 42 through 44).

DECISION

The decision of the examiner rejecting claims 70, 72 through 83, 91, 92, 94 through 99, 101 and 102 under 35 U.S.C. § 102(e) is affirmed, and the decision of the examiner rejecting claims 84 through 90 and 100 under 35 U.S.C. § 103(a) is affirmed.

Appeal No. 2003-0317  
Application No. 09/121,596

No time period for taking any subsequent action in connection  
with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

JAMES D THOMAS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
KENNETH W. HAIRSTON	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
ERROL A. KRASS	)	
Administrative Patent Judge	)	

KWH/lp